

ORIGINAL

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U.S. DISTRICT COURT E.D.N.Y.

★ JUN 15 2022 ★

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

BROOKLYN OFFICE

Darius Spates
15B1651
Plaintiff,

[Insert full name of plaintiff/prisoner]

CIVIL RIGHTS COMPLAINT
42 U.S.C. § 1983

CV 22-3595

JURY DEMAND

YES _____ NO ☒ **DONNELLY, J.**

-against-

State of New York
Erie County Parole
and Community Supervision
and Buffalo Police

HENRY, M.J.

Defendant(s).

[Insert full name(s) of defendant(s). If you need additional space, please write "see attached" and insert a separate page with the full names of the additional defendants. The names listed above must be identical to those listed in Part I]

- I. **Parties:** (In item A below, place your name in the first blank and provide your present address and telephone number. Do the same for additional plaintiffs, if any.)

X

A. Name of plaintiff Darius Spates

If you are incarcerated, provide the name of the facility and address:

Cape Vincent Correctional Facility
Route 12E, P.O. Box 739
Cape Vincent, NY 13618

Prisoner ID Number: 15B1651

If you are not incarcerated, provide your current address:

Telephone Number: _____

B. List all defendants. You must provide the full names of each defendant and the addresses at which each defendant may be served. The defendants listed here must match the defendants named in the caption on page 1.

Defendant No. 1

Parole officer Lombardo
Full Name
Employee of Community Supervision
Job Title
Parole officer
460 Main St, Bflo ny 14202
Address

Defendant No. 2

J. Aponte
Full Name
Bflo police
Job Title
employee of city police
department (BFlo)
Address

Defendant No. 3

officer: Clapp
Full Name
employee of city police
Job Title
department (BFlo)

Defendant No. 4

Address

Full Name

Job Title

Address

Defendant No. 5

Full Name

Job Title

Address

II. Statement of Claim:

(State briefly and concisely, the facts of your case. Include the date(s) of the event(s) alleged as well as the location where the events occurred. Include the names of each defendant and state how each person named was involved in the event you are claiming violated your rights. You need not give any legal arguments or cite to cases or statutes. If you intend to allege a number of related claims, number and set forth each claim in a separate paragraph. You may use additional 8 ½ by 11 sheets of paper as necessary.)

Where did the events giving rise to your claim(s) occur? Erie County
Department of Buffalo parole

When did the events happen? (include approximate time and date) arrested by
police officers on 2/9/21 approximately at 7:30 pm
for allegedly assault charges reported

Facts: (what happened?) by store clerk at Convenience store located at 177 French st who never testified as a witness for the state of the alleged assault. The brother of the store clerk who was also a witness who never made him self available for the state. please be advised this was a hearsay report to my parole officers who received a phone call from the arresting officers. please take note there was no victims who came to Criminal for the alleged assault. The brother of the store clerk did come to the contested hearing that was compelled by the D.A. to give a different story from the original but once again I was not found guilty for the alleged assault in Criminal Court to where all charges were dismissed by the judge.

II.A. Injuries. If you are claiming injuries as a result of the events you are complaining about, describe your injuries and state what medical treatment you required. Was medical treatment received?

there was no injuries.

I am suffering being in prison in a Covid infested facility due to the false acts of the State actors who abused their shield and authority to still have me incarcerated for parole violations,

that were dismissed by Supreme Criminal Court.

III. Relief: State what relief you are seeking if you prevail on your complaint.

to have my record expunged, to see justice served that the District attorney who prosecuted me and parole, police officers be held accountable for not updating to the community supervision and criminal justice department the dismissal data. I AM Suing for 1,000,000

I declare under penalty of perjury that on _____, I delivered this complaint to prison authorities at Cape Vincent Correctional Facility (date) - (name of prison) to be mailed to the United States District Court for the Eastern District of New York.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: 6/10/22

X

Patricia A. Recor
Signature of Plaintiff

Cape Vincent Correctional Facility
Name of Prison Facility or Address if not incarcerated
Route 12E, P.O. Box 739
Cape Vincent, NY 13618

Address

Sworn before me on
the date 10 June 2022

Patricia A. Recor

PATRICIA A. RECOR
Notary Public, State of New York
Qualified in Jefferson County
01RE6170583
Commission Expires on July 9, 2023

rev. 12/1/2015

proof of Service

From: Darius Spates

DIN: 15B1651

I am sending copies to the Erie County Criminal Court.

As well as the Erie County district Attorneys office.

I am also sending a copy to the department of Community Supervision of parole, located in Erie County.

I am requesting to be assigned an attorney OR to proceed as *pro-se* due to being a poor person.

Darius Spates
6/10/22

Sworn before me on this
Date 10 June 2022

Patricia A. Recor
PATRICIA A. RECOR
Notary Public, State of New York
Qualified in Jefferson County
01RI:6170583
Commission Expires on July 9, 2023

Affidavit to Support All Issues raised to this Court

1. Sentencing Minutes
2. the dismissal of criminal charges from Criminal Court.
3. The Minutes from parole, who ignored the criminal charges being dismissed.
4. The Misconduct of parole who steal sentenced me for the alleged criminal charges to 24 months re-incarceration.
5. The Criminal Court judge stated that this would be a conditional discharge.
6. This erroneous information from Community supervision needs to be corrected to my immediately release as part of the court order.

From: Darius Spates
DIN: 15B1651

6/3/22

7. This Document of Support is being sent from Jefferson County and Cape Vincent Correctional Facility,

I am also sending a copy to the Criminal Court Sentencing Judge Honorable Barbara Johnson-Lee.

I am currently at Cape Vincent Correctional Facility.

Darius Spates

6/10/22

Sworn before me on this
Date 10 June 2022

Patricia A. Recor

PATRICIA A. RECOR
Notary Public, State of New York
Qualified in Jefferson County
01RE6170583
Commission Expires on July 9, 2023

Client copy

**JOHN BEDASKA
ATTORNEY AT LAW
P.O. BOX 81
BUFFALO, N.Y. 14223**

**Telephone and Fax No.
(716) 873-7116**

Oct. 18, 2021

HON. GERALD GREENAN
460 Main St.
Buffalo, NY 14202

DEPT. OF CORRECTIONS AND COMMUNITY SUPERVISION
PAROLE VIOLATION UNIT
460 Main St.
Buffalo, NY 14202
Attention: MELISSA HIMMELSBACH

Re: Final Parole Revocation Hearing- 12/3/21
SPARES, DARIUS
WARRANT NO. 775332

Dear Judge Greenan and Ms. Himmelsbach;

A contested hearing in the above case is scheduled for Dec. 3, 2021. However, on Oct. 13, 2021 Mr. Spates received an Adjournment in Contemplation of Dismissal ("ACD") regarding charges which formed the basis of the conduct leading to his arrest. I enclose the Oct. 18, 2021 correspondence for his Buffalo City Court attorney, Mr. Schifano.

Under the newly amended law, this conduct cannot now form the basis of a sustained violation. The only remaining charges are technical violations for which incarceration is not permitted.

It appears that Mr. Spates should be released. Please advise regarding this matter.

Very truly yours

John Bedaska

cc: client

David C. Schopp
Chief Executive Officer

Lucian Wiza
Chief Financial Officer

Criminal Defense Unit

Kevin M. Stadelmaier
Chief Attorney

Danielle H. Maichle
Managing Attorney

Lori Hoffman
Managing Attorney

Michael S. Deal
Managing Attorney

Carrie Phillips
Managing Attorney

Valerie R. Watson
Support Staff Supervisor

Sophie Feal
RIAC Supervisor



Staff Attorneys

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Holly Erick
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Kenneth L. Goldberg
Kevin A. Harris
Roland L. W. Hayes
Charles R. Katz
Michael J. LoCicero
Kaitlyn L. Marinelli
Kristin Markarian
Athena E. McCrory
Brooke A. Meehan
Lillian Medina
Brooke Meehan
Ifeoluwa Popoola
Tyler W. Reimers
Sean F. Rheinheimer
Molly Roach
Sarah Ryan
Justin Schifano
Rebecca L. Town
Amanda S. Wadsworth
Samantha I.V. White
Karla J. Zimmerman

October 18, 2021

John Bedaska, Esq.
PO Box 81
Buffalo, NY 14223

RE: Darius Spates CR-940-21

Mr. Bedaska;

I am writing to inform you that I represent Darius Spates in Buffalo City Court on Docket CR-940-21. On Wednesday, October 13, 2021 Mr. Spates made the application for an Adjournment in Contemplation of Dismissal for six months, pursuant to CPL 170.55. This was granted by the Honorable Barbara Johnson-Lee, satisfying his pending charges in Buffalo City Court. The dismissal date is scheduled for April 13, 2022. He has no further court appearances, and this resolution was offered by the Erie County District Attorney's Office who intends no further prosecution.

If you have any questions please feel free to contact me. Thank you.

Respectfully,

Justin Schifano, Esq.
Ext. 215

Form #3008 (10/2021)

New York State Board of Parole
PAROLE REVOCATION DECISION NOTICE

NAME	Darius Spates	AREA OFFICE	Buffalo
NYSID #	01-629-471-R	HEARING LOCATION	Erie County Jail
DIN #	15-B-1651	HEARING DATE	December 3, 2021
WARRANT # 775332			
ATTORNEY	John Bedaska, Esq.	Post-Release Supervision:	YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>
		Contested:	YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>
		In Absentia:	YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>

Release Date: 12/15/2020

I. VIOLATOR CATEGORY1 ☒ **Non-technical.**(i) ☒ Current violation involves the commission of a felony or misdemeanor offense;☒ Category 1 ☐ Category 3(ii) ☐ Violator is serving a sentence for an offense defined in article 130 of the penal law or section 255.26 or 255.27 of such law, and such conduct violated a condition reasonably related to such offense and efforts to protect the public from the commission of a repeat of such offense.2 ☐ **Technical.** (The case cannot be defined as non-technical.) Check all that apply:☐ Violator absconded from supervision.☐ One or more sustained technical violations other than absconding, and that are not "certain technical violations" for which reincarceration is never permitted.☐ One or more sustained technical charges for certain technical violative conduct that is never re-incarcerable.3 ☐ **Local conditional release.**

Form 3008 (10/2021)

NAME Darius Spates

WARRANT # 775332

II. FINDINGS AND CONCLUSIONS

☐ No violations sustained. Therefore, all charges are dismissed, and delinquency is cancelled as explained below.

☒ Parole is Revoked. Charges 5 (8), 6 (8), (), (), (),

are sustained.

based on the information contained in the Violation of Release Report and

Credible Testimony of

Exhibits

PRS Melissa Himmelsbach
Victim - ALjabal Saleh
Parole Officer Michael Lombardo
Parole Officer Njabulo Dlodlo

Notice of Violation, Violation of Release Report,
Release to Parole Supervision, general
conditions, special conditions, deposition, photos.

☐ Charges (), (), (), (), (), (), (),

withdrawn.

☒ Charges not proven by clear and convincing evidence: 1 (13), 2 (4), 3 (13),
4 (13) and 7 (8).

☐ Charges (), (), (), () not approved for prosecution.

DELINQUENCY DATE OFsustained. **DELINQUENCY DATE of** 01/12/2021 modified to 02/09/2021

☐ Violator participated in or completed an alternative program, or had delinquency cancelled following completion of a diversion program, within the six months prior to the earliest date of the alleged violations. ALT 45-day program is therefore not available.

Form 3008 (10/2021)

NAME Darius Spates

WARRANT # 775332

III. DISPOSITION☒ REINCARCERATION IMPOSED. *☐ _____ Days reincarceration if no more than 30☒ 24 Months reincarceration☐ Hold to Maximum Expiration☐ ALT 45☐ ALT 90

An ALT disposition, if imposed, is a time assessment with provision that if the violator successfully completes an alternative program within a Department correctional facility, of the approximate length specified in this decision (45 days or 90 days), to be offered to the violator following their return to a Department correctional facility, then after their successful completion of such program, the violator shall be immediately re-released to community supervision.

☐ REVOKE AND RESTORE TO SUPERVISION**REVOKE AND RESTORE VIOLATOR CATEGORY AND CONDITIONS**☐ Non-technical☐ Technical

Revoke & Restore to Program (include program name & address):

Revoke & Restore Additional Special Conditions:

*Individual time assessments, which run concurrently, may be separately noted in the Analysis. Analysis appears on the pages(s) that follow.

Cape Vincent
Correctional Facility

NEOPOST

06/13/2022

US POSTAGE

\$001.76⁰⁰



ZIP 13618
041M11283101

U.S. MAIL
S. Courthouse
Cadman plaza East
klyn, New York 11201.



al Mail

Darius Spates D-1111531051

Cape Vincent Correctional Facility

Route 12E, P. O. Box 739

Cape Vincent, N.Y. 13618

U.S.

223

Brook